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**TRANSMITTAL  
FORM**

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Total Number of Pages in This Submission

20

Application Number	10/756,970
Filing Date	January 13, 2004
First Named Inventor	Kevin T. Foley
Art Unit	3733
Examiner Name	Mary C. Hoffman
Attorney Docket Number	MSDI-223/PC444.06

**ENCLOSURES (Check all that apply)**

<input type="checkbox"/> Fee Transmittal Form <input type="checkbox"/> Fee Attached <input checked="" type="checkbox"/> Amendment/Reply <input checked="" type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s) <input type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement  <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Reply to Missing Parts/ Incomplete Application <input type="checkbox"/> Reply to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers <input type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) _____ <input type="checkbox"/> Landscape Table on CD	<input type="checkbox"/> After Allowance Communication to TC <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input checked="" type="checkbox"/> Other Enclosure(s) (please identify below): Return Receipt Postcard
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Remarks

**SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT**

Firm Name	Krieg DeVault LLP		
Signature			
Printed name	Brad A. Schepers		
Date	February 20, 2009	Reg. No.	45,431

**CERTIFICATE OF TRANSMISSION/MAILING**

I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below:

Signature			
Typed or printed name	Brad A. Schepers	Date	February 20, 2009

This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re patent application of:

Foley et al.

Application Serial No. 10/756,970

Filed January 13, 2004

SURGICAL INSTRUMENTATION AND  
METHOD FOR TREATMENT OF THE SPINE

) Before the Examiner  
) Mary C. Hoffman  
)

) Group Art Unit 3733  
)

) Ref. No. MSDI-223/  
) PC444.06  
)

) February 20, 2009  
)

**RESPONSE TO FINAL OFFICE ACTION**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

In response to the final Office Action dated December 26, 2008, please enter and consider the following amendments and remarks. Additionally, please provide any extensions of time necessary and charge any additional fees which may be necessary to Deposit Account No. 12-2424, but not to include any payment of issue fees.

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on:

February 20, 2009

Date of Deposit

Brad A. Schepers

Name of Registered Representative

Signature

February 20, 2009

Date of Signature

### **INTRODUCTORY COMMENTS**

Claims 55-63, 65-74 and 94-103 were pending in the subject application for the final Office Action dated December 26, 2008. Each of the pending claims currently stands rejected. In view of the following amendments and remarks, reconsideration and allowance of the subject application are hereby requested.